

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADATeliix Technology LLC; The Toll-Free Exchange,  
LLC

Plaintiffs

v.

Affinity Network, Inc.

Defendant

Case No. 2:22-cv-00362-CDS-DJA

Order Granting Defendant's Motion to  
Dismiss, Denying Defendant's Motion to Stay  
as Moot, and Closing Case

[ECF Nos. 29, 30]

This case concerns plaintiff Teliix Technology LLC's patent, U.S. Patent No. 9,807,249, which discloses "methods and systems 'for routing toll-free calls through a toll-free exchange.'" Suppl. Compl., ECF No. 16 at 4 (quoting Patent Abstract, ECF No. 16-1 at 2). Teliix and plaintiff The Toll-Free Exchange, LLC, sue defendant Affinity Network Inc. for alleged infringement of the '249 patent. *See generally id.* Affinity Network moves to dismiss the supplemental complaint under Federal Rule of Civil Procedure 12(b)(6), based on Affinity Network's position that the '249 patent claims patent-ineligible subject matter. *See generally* Mot. to Dismiss, ECF No. 29. Also before me is defendant's motion to stay the case pending resolution of the motion to dismiss. ECF No. 30. Because I find that the '249 patent indeed concerns unpatentable subject matter, I grant Affinity Network's motion to dismiss and deny as moot its motion to stay the case.

**I. Relevant Background Information***a. Underlying Dispute*

Teliix is a telecommunications company that provides services to commercial and carrier markets, including routing of telecommunication messages. ECF No. 16 at 3. Teliix filed this action on February 28, 2022, accusing Affinity Network of infringing upon the '249 patent. *See*

1 *generally* Compl., ECF No. 1. Teliix then filed a supplemental complaint on May 9, 2022, to add  
2 The Toll-Free Exchange as a co-plaintiff. ECF No. 16. Teliix and The Toll-Free Exchange assert  
3 that Affinity Network’s “Toll-Free Peering Service” infringes upon plaintiffs’ service, known as  
4 the “Toll-Free IPX.” *Id.* at 2. The Toll-Free IPX “allows a commercial entity to bypass some or all  
5 of the traditional Public Switched Telephone Network . . . when routing toll-free calls.” *Id.* at 3. It  
6 can “result in significant cost savings and more efficient administration for commercial  
7 consumers that regularly receive toll-free calls or text messages, and the toll-free calls or text  
8 messages can be routed in a more efficient manner resulting in higher quality and reliability.” *Id.*

9 Underlying the operation of the Toll-Free IPX is plaintiffs’ ‘249 patent, issued by the  
10 United States Patent and Trademark Office on October 31, 2017. *Id.* at 3–4; *see also* ‘249 Patent,  
11 ECF No. 16-1 at 2. The ‘249 patent, entitled “Routing of Toll-Free Numbers Using a Toll-Free  
12 Exchange” (ECF No. 16-1), was issued to David Aldworth, the sole named inventor of the patent  
13 and president of Teliix. ECF No. 16 at 4. Teliix claims to be the owner of all interest in the ‘249  
14 patent and declares The Toll-Free Exchange its exclusive licensee. *Id.*

15 Teliix claims that Affinity Network’s infringement of the ‘249 patent is unsurprising  
16 because Affinity Network CEO Gary Fry “was employed as the Chief Operating Officer of  
17 Teliix, Inc. from August 2015 – January 2018.” ECF No. 16 at 6; *see also* ECF No. 16-6 at 27. Teliix  
18 alleges that Fry is “intimately familiar with the operation of plaintiffs’ service.” ECF No. 16 at 6.

19 Affinity Network responds to the supplemental complaint by moving to dismiss  
20 plaintiffs’ causes of action under Rule 12(b)(6). *See generally* ECF No. 29. The motion to dismiss  
21 alleges that the claims of the ‘249 patent are directed to routing a call based on the identification  
22 of the called party; thus, the ‘249 patent claims an unpatentable abstract idea. *Id.* at 7.  
23 Specifically, Affinity Network asserts that such claims have already been found to be  
24 unpatentable by the United States Court of Appeals for the Federal Circuit in *Voip-Pal.com, Inc. v.*  
25 *Apple Inc.*, 798 Fed. Appx. 644 (Fed. Cir. 2020) (per curiam), because routing calls based on  
26 characteristics of the participants is an abstract idea that fails step one of the test prescribed by

1 *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014). *Id.* Affinity Network further contends that  
2 “the claims at issue [in the ‘249 patent] merely recite generalized steps to carry out generic  
3 functions.” *Id.* Affinity Network states that a determination on the patentability of the ‘249  
4 patent requires neither discovery nor formal claim construction. *Id.* at 9. It urges this court to  
5 find the ‘249 patent directed toward an unpatentable idea and to dismiss plaintiffs’ claims with  
6 prejudice. *Id.* at 29.

7 *b. The ‘249 Patent*

8 The ‘249 patent describes a method for toll-free routing of phone calls using a toll-free  
9 exchange, designed specifically for use in commercial telecommunications. *See generally* Patent,  
10 ECF No. 16-1. The ‘249 patent seeks to improve on existing call routing methods (often called  
11 “traditional” or “legacy” networks) used to route toll-free calls. ECF No. 16 at 3, ¶ 10. Toll-free  
12 telephone numbers are set up such that the called party (also called the “toll-free subscriber”)  
13 pays for each phone call they receive, rather than the caller paying to place the call. ECF No. 16-1  
14 at 8. To obtain a toll-free number and become a toll-free subscriber, entities must register with  
15 Somos, the administrative organization designated by the Federal Communications Commission  
16 to handle such inquiries. ECF No. 16 at 2, ¶ 8. The entity must register as a Responsible  
17 Organization (RESPORG). *Id.* Such registration allows them to use the 1-800, 1-888, 1-877, etc.  
18 prefixed area codes with which we are all familiar. ECF No. 16-1 at 8. The entity is also assigned  
19 an identification number (RESPORG ID). ECF No. 16 at 2, ¶ 8. The ‘249 patent describes a  
20 method of routing calls based on the RESPORG IDs of the called party and claims its method  
21 does so more efficiently than traditional call routing services. *Id.*

22 Traditional phone calls go through a Public Switched Telephone Network (PSTN). A  
23 legacy routing network, PSTN works by routing phone calls from the caller through various  
24 exchanges to the callee. *Id.* Calls routed through the legacy PSTN networks require  
25 interconnects between (1) the caller to the local carrier, (2) the local carrier to the one or more,  
26 often multiple, other service providers, (3) that provider to a “tandem”—or centralized—

network exchange that hands the call from one carrier to another, (4) the tandem back to the recipient's carrier, and (5) the recipient's local carrier to the recipient themselves. *Id.* at 3, ¶ 10.

Each link of the chain represents a single service provider who needs to route the call over the PSTN. *Id.* at 2, ¶ 8. They generate their own charges and invoices for their service. *Id.* There may also be some loss of information (or inefficiencies) for each additional service provider. *Id.* The '249 patent seeks to cut out the middlemen and effectuate cost savings for high-volume commercial callers. For example (traditional PSTN illustration in solid arrows on top, '249 patent in dashed arrows at bottom):

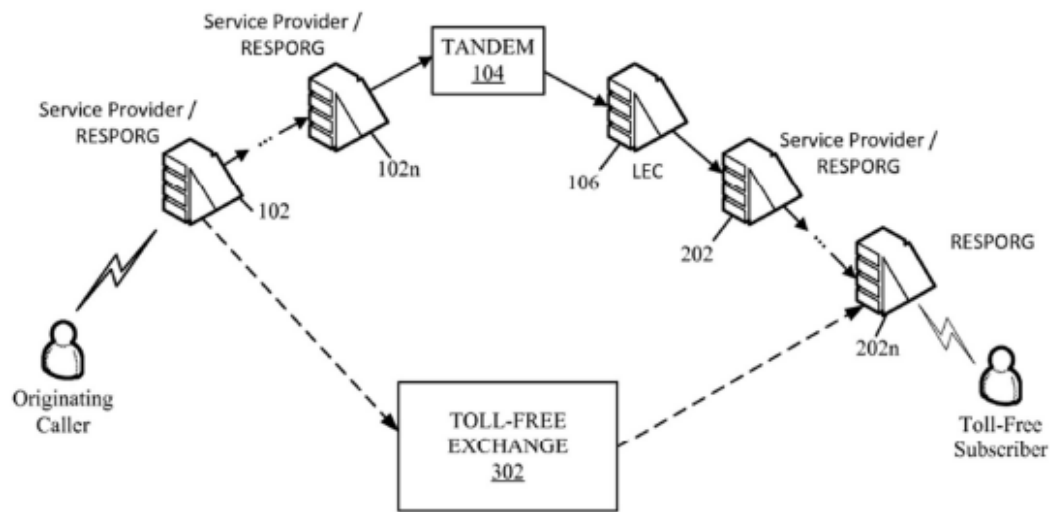


Fig. 3, ECF No. 16 at 4.

The '249 patent makes twenty claims, including three independent claims (claims 1, 10, and 17) and seventeen dependent claims, which either reference the independent claims (claims 2-4, 6, 8-9, 11-12, 14-15, and 18-20) or reference other dependent claims that themselves reference the independent claims (claims 5, 7, 13, 16). Claim 1 of the '249 patent claims the method for routing toll-free calls through a toll-free exchange. ECF No. 16-1 at 14. That method involves three steps:

**receiving**, from an originating responsible organization (RESPORG), a toll-free call, wherein the toll-free call is directed to a toll-free subscriber that is served by a terminating RESPORG;

1 *querying* a database to determine a RESPORG identification associated with the  
 2 terminating RESPORG, wherein the database is associated with the toll-free  
 exchange and stores the RESPORG identification associated with the  
 terminating RESPORG; and

3 *routing*, to the terminating RESPORG, the toll-free call based in part on the  
 4 RESPORG identification.

5 *Id.* Claim 10 of the ‘249 patent claims the method for routing toll-free calls without using a  
 6 carrier identification code but otherwise contains substantively similar language to Claim 1. *Id.*  
 7 Claim 17 of the ‘249 patent claims a system for routing a toll-free call using a toll-free exchange  
 8 and describes the hardware components necessary to effectuate the method described by Claims  
 9 1 and 10. *Id.*

## 10 II. Legal Standards

### 11 a. Motion to Dismiss under Rule 12(b)(6)

12 A defendant may move to dismiss an action for a plaintiff’s failure to allege sufficient  
 13 factual matter to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550  
 14 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content  
 15 that allows the court to draw the reasonable inference that the defendant is liable for the  
 16 misconduct alleged. The plausibility standard . . . asks for more than a sheer possibility that a  
 17 defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). In  
 18 ruling on a Rule 12(b)(6) motion, the court must “accept factual allegations in the complaint as  
 19 true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v.*  
 20 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

### 21 b. Motion to Dismiss for Patent Ineligibility Challenges Under 35 U.S.C. § 101

22 Affinity Network argues that the ‘249 patent fails to claim patent-eligible subject matter  
 23 under 35 U.S.C. § 101, considering the Supreme Court’s decision in *Alice*. ECF No. 29 at 9–29.  
 24 Patent eligibility under § 101 is an issue of law. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850  
 25 F.3d 1332, 1338 (Fed. Cir. 2017). “However, the Federal Circuit has identified certain factual  
 26 questions as underlying the § 101 analysis.” *Voip-Pal.Com, Inc. v. Apple Inc. (Voip-Pal.Com I)*, 375 F.

Supp. 3d 1100, 1124 (N.D. Cal. 2019) (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368-69 (Fed. Cir. 2018)). Accordingly, a district court may resolve the issue of patent eligibility under § 101 by way of a motion to dismiss. *See, e.g., Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 912 (Fed. Cir. 2017) (affirming determination of ineligibility made by district court on 12(b)(6) motion); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1345 (Fed. Cir. 2014) (same).

Although claim construction is often desirable, and may sometimes be necessary, to resolve whether a patent claim is directed to patent-eligible subject matter, “claim construction is not an inviolable prerequisite to a validity determination under § 101.” *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can.*, 687 F.3d 1266, 1273 (Fed. Cir. 2012). When a court has a “full understanding of the basic character of the claimed subject matter,” the question of patent eligibility may properly be resolved on the pleadings. *Content Extraction*, 776 F.3d at 1349.

*c. Substantive Patentability Standards under 35 U.S.C. § 101*

*i. Patent-Eligible Subject Matter Under 35 U.S.C. § 101*

35 U.S.C. § 101 “defines the subject matter that may be patented under the Patent Act.” *Bilski v. Kappos*, 561 U.S. 593, 601 (2010). Under § 101, the scope of patentable subject matter encompasses “any new or useful process, machine, manufacture, or composition of matter, or any new or useful improvement thereof.” *Id.* (quoting 35 U.S.C. § 101). These categories are broad, but they are not limitless. Section 101 “contains an important implicit exception: [l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice*, 573 U.S. at 216 (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

These three categories of subject matter are patent-ineligible because “they are the basic tools of scientific and technological work,” which are “free to all men and reserved exclusively to none.” *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 71 (2012) (citations omitted). Allowing patent claims for such purported inventions would “tend to impede innovation more than it would tend to promote it,” thereby thwarting the primary object of the patent laws. *Id.*

1 However, the United States Supreme Court has also cautioned that “[a]t some level, all  
2 inventions embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or  
3 abstract ideas.” *Id.* Accordingly, courts must “tread carefully in construing this exclusionary  
4 principle lest it swallow all of patent law.” *Alice*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 71).

5 The Supreme Court has “refined the ‘framework for distinguishing patents that claim  
6 laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible  
7 applications of those concepts’” in *Alice*. *Voip-Pal.Com I*, 375 F. Supp. 3d at 1125 (quoting *Alice*, 573  
8 U.S. at 217). This framework involves a two-step inquiry as follows:

9 First, we determine whether the claims at issue are directed to one of those  
10 patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims  
11 before us?” To answer that question, we consider the elements of each claim both  
12 individually and “as an ordered combination” to determine whether the  
13 additional elements “transform the nature of the claim” into a patent-eligible  
application. We have described step two of this analysis as a search for an  
“inventive concept”—i.e., an element or combination of elements that is  
“sufficient to ensure that the patent in practice amounts to significantly more  
than a patent upon the [ineligible concept] itself.”

14 *Alice*, 573 U.S. at 217–18 (alterations in original) (citations omitted); see also *In re TLI Commc’ns LLC*  
15 *Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (describing and applying “the now familiar two-  
16 part test described by the Supreme Court in *Alice*”).

17 *ii. Alice Step One – Identification of Claims Directed to an Abstract Idea*

18 There is no bright-line test to separate abstract ideas from concepts that are sufficiently  
19 concrete as to require no further inquiry under the first step of the *Alice* framework. *Voip-Pal.Com*  
20 *I*, 375 F. Supp. 3d at 1125 (collecting cases). Thus, in evaluating whether claims are directed  
21 toward patent-ineligible abstract ideas, courts generally begin “by compar[ing] claims at issue  
22 to those claims already found to be directed to an abstract idea in previous cases.” *Enfish, LLC v.*  
23 *Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016).

24 The first step of the *Alice* inquiry is a meaningful one wherein the court must identify,  
25 based on the specific facts at issue in a case, “a substantial class of claims [which] are *not*  
26 directed to a patent-ineligible concept.” *Enfish*, 822 F.3d at 1335. The court’s task is not to



1 determine whether claims merely involve an abstract idea at some level, *see id.*, but rather to  
2 examine the claims “in their entirety to ascertain whether their character as a whole is directed  
3 to some excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346  
4 (Fed. Cir. 2015).

5 *iii. Alice Step Two – Evaluation of Abstract Claims for an Inventive Concept*

6 Even if a claim involves an abstract idea, that does not foreclose its patentability. “A  
7 claim drawn to an abstract idea is not necessarily invalid if the claim’s limitations—considered  
8 individually or as an ordered combination—serve to ‘transform the claims into a patent-eligible  
9 application.’” *Voip-Pal.Com I*, 375 F.3d at 1127–28 (quoting *Content Extraction*, 776 F.3d at 1348)).

10 Thus, the second step of the *Alice* analysis asks whether the claim contains an element or  
11 combination of elements that “ensure[s] that the patent in practice amounts to significantly  
12 more than a patent upon the [abstract idea] itself.” *Alice*, 573 U.S. at 217–18.

13 Transforming an abstract idea to one that is patent-eligible requires more than simply  
14 reciting the idea followed by “apply it.” *Id.* at 221 (quoting *Mayo*, 566 U.S. at 72). Likewise, “mere  
15 recitation of concrete, tangible components is insufficient to confer patent eligibility to an  
16 otherwise abstract idea” when those components simply perform their “well-understood,  
17 routine, [and] conventional” functions. *In re TLI Commc’ns LLC*, 823 F.3d at 613 (citation omitted).  
18 “The question of whether a claim element or combination of elements is well-understood,  
19 routine[,] and conventional to a skilled artisan in the relevant field is a question of fact” that  
20 “must be proven by clear and convincing evidence.” *Berkheimer*, 881 F.3d at 1368. This inquiry  
21 “goes beyond what was simply known in the prior art.” *Id.* at 1369. Furthermore, “limiting an  
22 abstract idea to one field of use or adding token postsolution components [does] not make the  
23 concept patentable.” *Bilski*, 561 U.S. at 612 (citing *Parker v. Flook*, 437 U.S. 584 (1978)). Attempts  
24 to “limit the use of the abstract idea to a particular technological environment” are insufficient  
25 to render an abstract idea patent-eligible. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir.  
26 2014) (internal quotation marks and citation omitted).



1 Finally, a “non-conventional and non-generic arrangement of known, conventional  
 2 pieces” can amount to an inventive concept. *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*,  
 3 827 F.3d 1341, 1350 (Fed. Cir. 2016); *see also Amdocs (Israel) Ltd. V. Openet Telecom, Inc.*, 841 F.3d 1288,  
 4 1301 (Fed. Cir. 2016) (wherein claims received an inventive concept because they contained  
 5 “specific enhancing limitation[s] that necessarily incorporate[d] the invention’s distributed  
 6 architecture,” and the use of such distributed architecture transformed the claims into  
 7 patentable subject matter), *cert. denied*, 138 S. Ct. 469 (2017). This is also a fact-specific  
 8 determination.

9 *iv. Representativeness*

10 When claims of a patent are substantially similar and linked to the same abstract idea,  
 11 courts may focus their analysis on representative claims rather than analyzing each claim of the  
 12 patent at issue. *See, e.g., Content Extraction*, 776 F.3d at 1348 (focusing the *Alice* analysis on a single  
 13 representative claim); *Voip-Pal.Com I*, 375 F. Supp. 3d at 1129 (“the Court need not individually  
 14 analyze every claim if certain claims are representative.”) (citing *Alice*, 573 U.S. at 224–28).  
 15 Courts may treat a claim as representative “if the patentee does not present any meaningful  
 16 argument for the distinctive significance of any claim limitations not found in the representative  
 17 claim or if the parties agree to treat a claim as representative.” *Berkheimer*, 881 F.3d at 1365 (citing  
 18 *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir. 2016)).

19 *v. Preemption*

20 In addition to these principles, “courts sometimes find it helpful to assess claims against  
 21 the policy rationale for § 101. *Voip-Pal.Com I*, 375 F. Supp. 3d at 1129. The concern that undergirds  
 22 § 101 jurisprudence is preemption. *Alice*, 573 U.S. at 223. Thus, courts have readily concluded that  
 23 a claim is not patent-eligible when the claim is so abstract that it preempts “use of [the claimed]  
 24 approach in all fields” and “would effectively grant a monopoly over an abstract idea.” *Bilski*, 561  
 25 U.S. at 612. However, the inverse is not true: “[w]hile preemption may signal patent ineligible  
 26

subject matter, the absence of complete preemption does not demonstrate patent eligibility.”  
*FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016) (alteration in original).

*d. Leave to Amend*

If the court determines that a complaint should be dismissed, it must then decide whether to grant leave to amend. Rule 15(a) of the Federal Rules of Civil Procedure states that leave to amend “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks omitted). When dismissing a complaint for failure to state a claim, “a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal quotation marks omitted). Accordingly, leave to amend should generally be denied only if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008).

### III. Analysis

Having considered the briefing together with the parties’ oral arguments on the motion<sup>1</sup>, I find that Claim 1 of the ‘249 patent is directed toward the abstract idea of routing a call based on the RESPORG ID of the called party under *Alice* step one and claims no patent-eligible innovative concept under *Alice* step two. I further find that Claim 1 of the ‘249 patent is

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<sup>1</sup> At oral argument, Affinity Network submitted to the court a composite exhibit consisting of thirty-six PowerPoint slides. ECF No. 45 at 15–16. It used the presentation as a demonstrative aid during the hearing. *Id.* Plaintiffs did not object to Affinity Network’s use of the slides as a demonstrative aid, ECF No. 45 at 64–65, but now object to admission of the presentation as evidence as well as some of the statements of law or fact within those slides. *See generally* Pl’s Notice, ECF No. 42. I agree that on a motion to dismiss, I may not consider external evidence such as the PowerPoint slides but render no judgment as to Affinity Network’s characterizations of law or fact. I did not consider the PowerPoint slides or any analysis therein in making the determinations herein.

1 representative of the patent's nineteen other claims and ultimately conclude that the '249 patent  
2 is directed toward patent-ineligible subject matter.

3 *a. Alice Step One for Claim 1 of the '249 Patent*

4 *i. The Parties' Arguments*

5 Affinity Network contends that the '249 patent is directed to the patent-ineligible  
6 abstract idea of routing a call based on the identification of the called party. ECF No. 29 at 2.  
7 Affinity lists four reasons to support its contention: (1) routing a call based on the identification  
8 of the called party was deemed an abstract idea and unpatentable when the Federal Circuit  
9 summarily affirmed the district court's order in *Voip-Pal.Com, Inc. v. Apple Inc. (Voip-Pal.Com II)*, 411  
10 F. Supp. 3d 926, 951 (N.D. Cal. 2019); (2) all of the claims at issue in the '249 patent recite  
11 generalized steps to carry out generic functions, rather than specific improvements to hardware  
12 in the Toll-Free Exchange; (3) the claim methods can be performed mentally or with pen and  
13 paper; and (4) the abstract idea of routing calls based on the identification of the called party is  
14 analogous to human telephone operators. *Id.* at 2–4.

15 Plaintiffs respond that Affinity's description of the '249 patent as "routing a call based on  
16 the identification of the called party" is an oversimplification. ECF No. 31 at 1. They assert that  
17 the claims of the '249 patent are not directed to an abstract idea and instead "address an  
18 improved, innovative process for a specific implementation of toll-free routing." *Id.* They do not  
19 merely claim the idea of routing a call, but rather are directed toward "a specific implementation  
20 of a solution to a problem in the [art]." *Id.* (citing *Enfish*, 822 F.3d at 1338). Finally, plaintiffs note  
21 that Affinity Network's other three reasons fail to render the challenged claims abstract. *Id.* at 10.

22 *ii. Findings*

23 Step one of the *Alice* inquiry considers the claims "in light of the specification" to  
24 determine "whether their character as a whole is directed to excluded subject matter." *Enfish*,  
25 822 F.3d at 1335 (citation omitted). I am careful not to express the claim's focus at an unduly  
26 "high level of abstraction . . . untethered from the language of the claims," but rather in parallel

1 with the level of generality or abstraction expressed in the claims themselves. *Id.* at 1337; *see also*  
 2 *Thales Visionix v. United States*, 850 F.3d 1343, 1347 (Fed. Cir. 2017) (requiring courts to “ensure at  
 3 step one that [they] articulate what the claims are directed to with enough specificity to ensure  
 4 the step one inquiry is meaningful”). My inquiry therefore “centers on determining the ‘focus’ of  
 5 the claims.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir.  
 6 2017), *cert denied*, 139 S. Ct. 378 (2018).

7 “Three themes” in the jurisprudence of the Supreme Court and the United States Court  
 8 of Appeals for the Federal Circuit “demonstrate that [] Claim 1 is directed to an abstract idea: (a)  
 9 the claimed method discloses only generalized steps drafted in purely functional terms; (b) it is  
 10 analogous to well-known, longstanding practices, and (c) it does not recite an improvement in  
 11 computer functionality.” *Voip-Pal.Com II*, 411 F. Supp. 3d at 951 (quoting *Amdocs*, 841 F.3d at  
 12 1294)). Specifically, Claim 1 discloses a method of routing toll-free calls through a toll-free  
 13 exchange. ECF No. 16-1 at 15. The method is comprised of three steps:

- 14 (1) **receiving** a qualifying call (that is, one from an originating RESPORG and
- 15 directed to a toll-free subscriber that will be served by a terminating RESPORG),
- 16 (2) **querying** a database to determine the identity of the called party (that is,
- 17 determining the RESPORG ID associated with the terminating RESPORG), and
- (3) **routing** the call to the called party based in part on the identification of the  
 called party.

18 *Id.* The focus of Claim 1 informs that the ‘249 patent is directed to the abstract idea of routing a  
 19 call based on the RESPORG ID of the called party.

20 Further, Claim 1 is abstract because it discloses generalized steps to carry out generic  
 21 functions, it is analogous to the long-standing practice of human telephone operators, and it fails  
 22 to describe any actual improvements in hardware or software that enable its methods.

23 “Although there is no ‘single, universal’ definition of an abstract idea, the Court looks to past  
 24 patentable subject matter cases as helpful guideposts.” *Voip-Pal.Com II*, 411 F. Supp. 3d at 951  
 25 (quoting *Amdocs*, 841 F.3d at 1294)).

1 The '249 patent also discloses generalized steps to be performed using hardware generic  
2 to call routing. "Generalized steps to be performed on a computer using conventional computer  
3 activity are abstract." *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017).  
4 The Federal Circuit has held that specifications which "are not directed to a specific  
5 improvement to computer functionality" and fail "to provide any technical details for the  
6 tangible components, [and] instead predominantly describe[] the system and methods in purely  
7 functional terms" concern unpatentable subject matter. *TLI Commc'ns*, 823 F.3d at 612. Claim 1  
8 here describes the purported invention in broad, generic functional terms but fails to identify  
9 how those ends are achieved, with the specification being no clearer. Claim 1 describes utilizing  
10 the RESPORG ID of the called party to route calls as the specific method claimed by the '249  
11 patent. Plaintiffs assert that the challenged claims instruct a user to "determine a RESPORG  
12 [ID] – a term which is defined and explained in the patent . . . to be a specific, non-generic  
13 characteristic." ECF No. 31 at 12:5–7 (internal quotation marks omitted). Yet RESPORG IDs  
14 were not uniquely devised by plaintiffs—they are assigned by SMS-800, "an administrative  
15 entity responsible for assigning RESPORG IDs to RESPORGs and storing toll-free numbers and  
16 routing information related to each toll-free number." ECF No. 16-1 at 8:20–23.

17 Plaintiffs argue that "the challenged claim . . . details both the 'how' and the 'why' of  
18 using the RESPORG ID as a central element of the claimed technology." ECF No. 31 at 13:11–12.  
19 Yet plaintiffs fail to describe the specific language in Claim 1 or in the specifications of the '249  
20 patent that details the "how" of using RESPORG ID. The querying and routing steps of Claim 1  
21 use RESPORG IDs to carry out the method, but the claim "contains no instructions for how  
22 each step of the routing process is accomplished" and instead "simply requires the functional  
23 results" of receiving, querying, and routing based on the RESPORG ID. *Voip-Pal.Com II*, 411 F.  
24 Supp. 3d at 955. In order "to transform an unpatentable law of nature [or abstract idea] into a  
25 patent-eligible application of such a law [or abstract idea], one must do more than simply state  
26 the law of nature [or abstract idea] while adding the words 'apply it.'" *Mod Stack LLC v. Aculab*,

1 *Inc.*, 2019 WL 3532185, at \*2 (quoting *Mayo*, 566 U.S. at 72)). Plaintiffs’ level of specificity—  
2 claiming method steps without reference to how they are physically carried out—fails to  
3 transform the claim into a patentable one.

4 Finally, plaintiffs’ argument that claims which “represent an improvement upon an  
5 existing technology are not abstract,” seemingly conflates the results of using RESPORG IDs to  
6 route calls with the abstract idea of using RESPORG IDs to route calls. ECF No. 31 at 14:3–4  
7 (citing *BroadSoft, Inc. v. CallWave Commc’ns, LLC*, 282 F. Supp. 3d 771, 781 (D. Del. 2017), *aff’d*, 739 F.  
8 App’x 985 (Fed. Cir. 2018)). There is no language in Claim 1 suggesting that plaintiffs have  
9 designed a novel component used in the receiving, querying, or routing steps. A claim that  
10 “recite[s] the *what* of the invention, but none of the *how* that is necessary to turn the abstract  
11 ideas into a patent-eligible application” is directed toward a patent-ineligible abstract idea. *TDE*  
12 *Petroleum Data Sols., Inc. v. AKM Enter., Inc.*, 657 Fed. Appx. 991, 933 (Fed. Cir. 2016) (affirming  
13 district court’s dismissal of infringement suit under § 101 after finding nothing in claim 1 that  
14 “add[ed] anything more to the abstract idea[s] of storing, gathering, and analyzing data”).

15 That is, “a claim for a *new* abstract idea is still an abstract idea,” *NEXRF Corp. v. Playtika*  
16 *Ltd.*, 547 F. Supp. 3d 977 (D. Nev. 2021), *aff’d* 2022 WL 1513310 (Fed. Cir. May 13, 2022), and  
17 along the same lines, an improved abstract idea is still nonetheless an abstract idea. I agree with  
18 Affinity Network’s position that “plaintiffs err by focusing on asserted benefits of the claims as  
19 opposed to the language of the claims,” ECF No. 33 at 8, because plaintiffs have not  
20 demonstrated that the claim language itself describes how the steps of Claim 1’s method may be  
21 carried out. Instead, the claim language describes generic steps using well-known hardware  
22 arranged to utilize an input, the RESPORG IDs, which plaintiffs themselves did not create. “In  
23 short, because the claim is bereft of the critical ‘how it does it’ aspect of the invention,  
24 Representative Claim 1 is directed to the abstract idea of routing a communication” based on the  
25 RESPORG IDs of the participants. *Voip-Pal.Com II*, 411 F. Supp. 3d at 955.

1 Second, the analogousness of Claim 1 to methods performed by human telephone  
2 operators further supports my conclusion that Claim 1 is directed to an abstract idea. *Id.* Courts  
3 often compare technology claims to their manual counterparts in determining whether claims  
4 are directed to an abstract idea. *See, e.g., Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307,  
5 1320 (Fed. Cir. 2016) (concluding that claims related to “receiving, screening, and distributing  
6 email” were directed to an abstract idea because they were analogous to the steps performed by  
7 individuals in corporate mailrooms). Because the claims in *Symantec* were directed to  
8 “fundamental practices long prevalent in our system and methods of organizing human activity,”  
9 they were directed to an abstract idea. *Id.* at 1318 (internal quotation marks omitted). Similarly,  
10 Claim 1 is analogous to preexisting practices of manual call routing, a fundamental practice long  
11 prevalent in modern systems of telecommunication.

12 Plaintiffs attempt to distinguish the ‘249 patent from the generic methods utilized by  
13 human telephone operators by stating that “the challenged claims are directed to a new and  
14 innovative process . . . including techniques for the use of buy-rates and floor-rates to create an  
15 efficient economic interchange between participants.” ECF No. 31 at 16:24–27. However, Affinity  
16 Network notes that “call operators ha[d] been routing calls based on buy-rates and floor-rates  
17 for decades” before the ‘249 patent. ECF No. 33 at 9:13–14. Plaintiffs do not assert that they have  
18 some specialized computer or other technology to enable the use of buy-rates and floor-rates,  
19 nor do they point to specific claim language that differentiates their use of those terms from the  
20 historical practices of call operators.

21 Affinity Network notes that Claim 1’s method “can be analogized to longstanding  
22 practices occurring in telephone control rooms” and that “[t]he asserted claims differ only in  
23 their computer-based technological environment.” ECF No. 29 at 19. While the asserted claims  
24 differ in that they use RESPORG IDs to route calls rather than area codes or caller identification  
25 codes, which were typically used by human telephone operators, the use of RESPORG IDs is not  
26 sufficiently distinctive to separate the claimed method from the similar longstanding practice.



1 And, neither the RESPORG IDs nor the hardware used to carry out the method of Claim 1 were  
2 created by plaintiffs.

3 Claim 1 discloses only generalized methods carried out by generic components drafted in  
4 functional terms, its method is analogous to a longstanding practice of telephone control rooms  
5 routing calls based on the identity of the called party, and it discloses no improvement in  
6 computer functionality that enables such a method to be effectuated. I thus conclude that Claim  
7 1 of the '249 patent is directed to the abstract idea of routing a call based on the RESPORG ID of  
8 the called party.

9 *b. Alice Step Two for Claim 1 of the '249 Patent*

10 Because I find that under *Alice* step one, Claim 1 of the '249 patent is directed to an  
11 abstract idea, I move to step two of the *Alice* test and search for “an inventive concept” that is  
12 “sufficient to ensure that the patent in practice amounts to significantly more” than a patent  
13 upon the abstract idea itself. *Alice*, 573 U.S. at 217–18. Stated otherwise, my analysis at *Alice* step  
14 two is a search for an inventive concept.

15 *i. The Parties' Arguments*

16 Affinity Network contends that none of the claims of the '249 patent include an  
17 inventive concept that may transform them into a patent-eligible invention because the claims  
18 recite a conventional approach to determine where to route calls. ECF No. 29 at 4. Plaintiffs  
19 respond that Affinity Network cannot disprove the factual allegations in the supplemental  
20 complaint under the “clear and convincing standard” (as to whether a claim element or  
21 combination of elements is well-understood, routine, and conventional to a skilled artisan in the  
22 relevant field). ECF No. 31 at 2 (citing *Berkheimer*, 881 F.3d at 1368). Plaintiffs add that Affinity  
23 Network focuses on the hardware elements and only briefly addresses the individual use of the  
24 RESPORG ID. *Id.* at 18:2–5.

1                   ii. Findings

2           Claim 1 does not recite an inventive concept. “To save the patent at step two, an  
3 inventive concept must be evident in the claims.” *RecogniCorp*, 855 F.3d at 1327. In assessing  
4 whether a claim recites an inventive concept, I must consider its elements “both individually and  
5 as an ordered combination.” *Alice*, 573 U.S. at 217. Accordingly, I first analyze the individual  
6 claim elements of Claim 1 and then turn to the ordered combination of those elements.

7                   A. *The Individual Claim Elements Do Not Provide an Innovative Concept*

8           I find that routing a call based on the RESPORG IDs of the called party is not an  
9 inventive approach in achieving the desired result of routing toll-free calls through a toll-free  
10 exchange. To supply an inventive concept, a claim element “must be more than well-understood,  
11 routine, conventional activity.” *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1262 (Fed.  
12 Cir. 2016). It “cannot simply be an instruction to implement or apply the abstract idea on a  
13 computer.” *BASCOM*, 827 F.3d at 1349. For example, it may be found in an “inventive set of  
14 components or methods,” “inventive programming,” or an inventive approach in “how the  
15 desired result is achieved.” *Elec. Power Grp.*, 830 F.3d at 1355. On the other hand, “conventional  
16 steps, specified at a high level of generality, [are] not enough to supply an inventive concept.”  
17 *Alice*, 573 U.S. at 222 (internal quotation marks omitted). Nor are “generic computer, network,  
18 and Internet components” inventive. *BASCOM*, 827 F.3d at 1349. Yet, conventional steps and  
19 generic computer components are all that Claim 1 describes.

20           As already discussed, Claim 1 identifies three steps to accomplish its method: receiving,  
21 querying, and routing. ECF No. 16-1 at 13:27–40. All three steps have been used in the prior art.  
22 The differentiating factor of plaintiffs’ patent is simply an element therein: utilization of the  
23 RESPORG IDs in the querying and routing steps. Claim 1 also describes physical elements to  
24 carry out its method: a toll-free exchange, a policy router of the toll-free exchange, an originating  
25 RESPORG, a terminating RESPORG, and a database. *Id.* Each of these physical elements has also  
26 been used in the prior art and can likewise be described in generic computing terms.

1 A toll-free exchange, which is a “system used to route calls”, *id.* at 4:24–26, can be any  
2 computer. *See id.* at 10:64–11:1 (illustrating “exemplary architecture of a computing device that  
3 can be used to implement aspects of the toll-free exchange” and describing “a laptop or personal  
4 computer, tablet computing device, phone, and servers” as examples). Such an exchange may be  
5 comprised of originating and terminating switches, a policy router, a database, a server, and a  
6 thrasher. Figure 4, *id.* at 5. Neither the ‘249 patent’s claims nor its specification require any  
7 special technical requirements or describe unique features of the toll-free exchange, nor do they  
8 list any improvements to existing components of the exchange.

9 The policy router is similarly described in generic functional terms: it “includes the  
10 routing logic and decision-making of the toll-free exchange,” *id.* at 10:32–34, “provides the SCP  
11 with the toll-free number”, *id.* at 11:34–36, “informs the originating switch to attach the IP  
12 address of the terminating RESPORG”, *id.* at 11:18–20, and “is configured to route calls to  
13 terminating RESPORGs.” *Id.* at 12:25–28. The specification does not describe how the policy  
14 router carries out these functions.

15 Thus, the only possible inventive concept within the individual elements of Claim 1  
16 would be the utilization of RESPORG IDs in the querying and routing steps. But the originating  
17 and terminating RESPORGs are simply entities external to plaintiffs. *See, e.g., id.* at 10:63–65  
18 (“[I]n some embodiments, the originating RESPORG may be a communications company such  
19 as Verizon Wireless.”). RESPORGs and their IDs “were well-established years, if not decades,  
20 before the alleged invention.” ECF No. 29 at 22:17–18.

21 The database is used to store the RESPORG IDs, the buy rates, and other data of  
22 RESPORGs that participate in the toll-free exchange.” ECF No. 16 at 10:34–36. The ‘249 patent  
23 fails to describe how the database carries out its storage functionality. This is a perilous  
24 omission because databases were “well-understood, routine, and conventional at the time of the  
25 claimed invention.” ECF No. 29 at 23:1–2.

1           Ultimately, none of the physical elements claimed by plaintiffs are novel, unique, or  
2 inventive. They are generic hardware components arranged in a fashion described by the  
3 functional manner of their specific operations; a point not disputed by the plaintiffs. Plaintiffs  
4 instead focus their analysis under *Alice* step two on the ‘249 patent’s detail of the deficiencies of  
5 conventional toll-free routing, the ‘249 patent’s teaching of a novel solution specific to the  
6 problem in the conventional art, and a description of the claims in terms of their improvement  
7 over the conventional art. ECF No. 31 at 19–24. All of plaintiffs’ arguments seem to be directed at  
8 demonstrating that the use of RESPORG IDs to carry out the method described by Claim 1 is the  
9 innovative concept. *Id.* Plaintiffs err by primarily focusing on the results of the patent rather than  
10 the language used within the patent’s claims or specification. Consequently, I agree with  
11 Affinity Network that plaintiffs’ arguments “are variations on the theme of plaintiffs’ *Alice* step  
12 one arguments and are no more compelling in the context of *Alice* step two.” ECF No. 33 at 10.  
13 Specifically, the patent’s detail of deficiencies in the prior art serves only to highlight the  
14 benefits passed down to consumers of the Toll-Free Exchange: lower costs, efficiencies, etc.

15           Finally, I find unconvincing plaintiffs’ contention that the ‘249 patent’s use of RESPORG  
16 IDs to route toll-free calls is a non-generic innovative concept that distinguishes the patent’s  
17 methods from an abstract idea. This argument does not demonstrate that use of the RESPORG  
18 IDs qualifies it as an inventive concept because it is not “significantly more than the abstract  
19 idea itself.” *BASCOM*, 827 F.3d at 1349. A truly innovative concept “cannot simply be an  
20 instruction to implement or apply the abstract idea on a computer.” *BASCOM*, 827 F.3d at 1349.  
21 “If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and  
22 well-understood techniques, the claim has not been transformed into a patent-eligible  
23 application of an abstract idea.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed. Cir.  
24 2018). The abstract idea at the heart of the ‘249 patent is a method for routing calls based on the  
25 RESPORG ID of the called party—this is one and the same as the alleged innovative concept. As  
26 mentioned *supra*, RESPORGs and RESPORG IDs are not novel to plaintiffs. Neither the physical

1 components described by Claim 1 and the ‘249 patent specifications nor the concept of using  
2 RESPORG IDs to route toll-free calls sufficiently constitutes an inventive concept, such that the  
3 abstract idea claimed by Claim 1 of the ‘249 patent could be transformed into patent-eligible  
4 subject matter.

5 *B. The Ordered Combination of Claim Elements Does Not Provide an Inventive*  
6 *Concept*

7 Plaintiffs briefly argue that the ordered combination of claim elements in Claim 1 also  
8 constitutes an inventive concept. *See* ECF No. 31 at 23:14–17 (devoting a single sentence to the  
9 topic and stating that “[a]s an ordered configuration, the independent claims are directed to an  
10 innovative improvement over the conventional art that is specifically claimed: a toll-free  
11 network that operates outside the confines of the CIC-based [caller identification code-based]  
12 PSTN that results in reduced complexity, improved scalability, lower costs, and streamlined  
13 administration”). This analysis is deficient. At this stage in the *Alice* analysis, plaintiffs needed to  
14 assert that the ordered combination of steps within Claim 1 provides some inventive concept,  
15 not merely a recitation of the alleged benefits of a configuration of generic computer  
16 components. *See Alice*, 573 U.S. at 225–26 (finding that the claims in question did not contain an  
17 inventive concept because they did not purport to improve the functioning of the computer  
18 itself, nor did they effect an improvement in any other technology or technical field. The Court  
19 concluded that the method claims recited an abstract idea implemented on a generic computer  
20 while the system claims recited a handful of generic computer components configured to  
21 implement the same idea).

22 Ultimately, the order of the receiving, querying, and routing steps is a conventional  
23 ordering of steps implemented on generic technology. Regardless of the benefits provided by  
24 using RESPORG IDs over caller identification codes, the fundamental roadblock plaintiffs need  
25 to—but cannot—overcome is that the ‘249 patent is directed to the idea of routing calls based  
26 on the identity of the called party. They cannot cite to any language within the patent’s claims

1 that teaches an inventive concept capable of description beyond this abstract idea. A claim for a  
2 new and beneficial abstract idea is still an abstract idea. Plaintiffs cannot describe their  
3 inventive concept without using the language of that abstraction, and for that reason, I conclude  
4 that Claim 1 is directed toward unpatentable subject matter.

5 *c. Claim 1 of the '249 Patent is Representative of the Patent's Other Claims*

6 *i. The Parties' Arguments*

7 Affinity Network asserts that Claim 1 of the '249 patent is representative of all claims in  
8 the '249 patent for the purpose of analyzing subject-matter eligibility. ECF No. 29 at 10. Affinity  
9 Network contends that both other independent claims of the patent (Claims 10 and 17) are  
10 represented by Claim 1 because Claim 10 is "nearly identical to . . . Claim 1 in that it recites the  
11 exact same three steps" while Claim 17 "simply claims a system comprised of generic computing  
12 and network components that are used to perform the same method of . . . Claim 1." *Id.* at 11. They  
13 further argue that the dependent claims of the patent (Claims 2–9, 11–16, and 18–20) are  
14 represented by Claim 1. *Id.* Affinity Network notes that the dependent claims add "additional  
15 generic steps for accomplishing the claimed method" (Claims 2, 4, 5, 6, 7, 11, 12, 13, 15, 16, 19) or  
16 "additional generic components that perform their basic functions" (Claims 3, 8, 9, 14, 18, 20). *Id.*  
17 Plaintiffs aver that Affinity Network improperly characterizes Claim 1 as representative of the  
18 remainder of claims of the '249 patent. ECF No. 31 at 24. They merely note that "the remaining  
19 claims represent material and significant distinctions over Claim 1, including . . . additional  
20 improvements to the conventional art." *Id.*

21 *ii. Findings*

22 I find that claim 1 is representative of the claims made by the '249 patent. Claim 1 reads  
23 as follows:

24 1. A method for routing toll-free calls through a toll-free exchange, the  
25 method, performed by a policy router of the toll-free exchange,  
26 comprising:

1 receiving, from an originating responsible organization  
 2 (RESPORG), a toll-free call, wherein the toll-free call is  
 3 directed to a toll-free subscriber that is served by a  
 4 terminating RESPORG;  
 5 querying a database to determine a RESPORG identification  
 6 associated with the terminating RESPORG, wherein the  
 7 database is associated with the toll-free exchange and  
 8 stores the RESPORG identification associated with the  
 9 terminating RESPORG; and  
 10 routing, to the terminating RESPORG, the toll-free call based in  
 11 part on the RESPORG identification.

12 ECF No. 16-1 at 15:27–40. Affinity Network argues that all twenty of the claims of the ‘249  
 13 patent are directed to the abstract idea of routing a call based on the identification of the called  
 14 party. Plaintiffs respond that “the remaining claims represent material and significant  
 15 distinctions over Claim 1, including . . . additional improvements to the conventional art.” ECF  
 16 No. 31 at 24. Affinity Network replies that the alleged improvements fail to demonstrate a shift  
 17 in focus of any claim beyond the abstract idea captured by Representative Claim 1. ECF No. 33  
 18 at 3.

19 Of the twenty total claims of the ‘249 patent, three (Claims 1, 10, and 17) are independent  
 20 claims, or claims without reference to preceding claims. *See* ECF No. 16-1 at 15–16. The others are  
 21 dependent claims that reference the independent claims. Claim 1 is Affinity Network’s suggested  
 22 representative claim.

23 Claim 10 references the same three steps as Claim 1 (receiving, querying, and routing)  
 24 nearly identically—it adds only the phrase “through a protected network” to the routing step. *Id.*  
 25 at 15:15–28. Claim 10 does pertain to a method for routing toll-free calls without using a carrier  
 26 identification code, compared to Claim 1 which does not specify whether a carrier identification  
 code is used. *Id.* Plaintiffs have not presented any meaningful argument for the distinctive  
 significance of whether a carrier identification code is used in the routing method. The claims  
 are thus substantially similar. Accordingly, I find Claim 1 to be representative of Claim 10.

Claim 17 describes a system of computer and network components used to perform the  
 method of Claim 1. *Id.* at 16. Specifically, Claim 17 describes “[a] system for routing a toll-free call



1 using a toll-free exchange, the system comprising [the computer and network components].” *Id.*  
2 Because Claim 17 pertains to the same underlying idea of Claim 1 by reciting systems or methods  
3 for routing toll-free calls, the claims are substantially similar. Plaintiffs have not presented any  
4 substantive argument for the distinctive significance between the system described in Claim 17  
5 and the method described in Claim 1. As a result, I find Claim 1 to be representative of Claim 17.

6       The remaining claims (Claims 2–9, 11–16, and 18–20) are all dependent on Claims 1, 10, or  
7 17. Some of them add additional steps for accomplishing the method described by the  
8 independent claims. For example, Claim 2 describes the method wherein the originating  
9 RESPORG and terminating RESPORG are enrolled in the toll-free exchange while Claim 3  
10 describes the method wherein the RESPORG identification is obtained by a service control  
11 point. *Id.* at 15:41–45. Plaintiffs attempt to blanket all the other claims as unrepresented by Claim  
12 1 because they “represent material distinctions over Claim 1, including with regards to additional  
13 improvements to the conventional art based on ability to route native-video and high-definition  
14 audio . . . , centralize administration . . . , and interconnect with the conventional routing  
15 networks of the prior art.” ECF No. 31 at 24. However, plaintiffs do not demonstrate how those  
16 improvements represent any material difference that sets those claims apart from Claim 1.  
17 Whether video, native or not, or audio, high-definition or low, it is the idea of routing calls based  
18 on the identification of the called parties, that inheres to each claim. I find no new material  
19 suggesting some “inventive concept” with respect to the idea of routing calls based on the  
20 identification of the called parties.

21       *d. The ‘249 Patent is Patent Ineligible*

22       I find Claim 1 representative of independent claims 10 and 17, as well as dependent claims  
23 2–9, 11–16, and 18–20. Because I find that Claim 1 fails the *Alice* test—as it is directed toward an  
24 abstract idea and fails to adduce an innovative concept sufficient to transform the idea into  
25 patent-eligible subject matter—I conclude that the entire ‘249 patent is directed toward  
26 unpatentable subject matter.

e. *Leave to Amend*

Plaintiffs do not request leave to amend. Nonetheless, I may deny leave to amend if it would cause undue delay or prejudice to the opposing party or if the amendment would be futile. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Because plaintiffs' claims of infringement are rooted in the language of the patent's claims and specification, which I find to be directed toward unpatentable subject matter, amendment would thus be futile. *See, e.g., NEXRF*, 547 F. Supp. 3d at 993 (“[T]he Court cannot foresee any allegations [p]laintiff could add that would solve one of the key issues with the purportedly inventive steps of the asserted patent claims—that they merely ‘describe the functions of the abstract idea itself, without particularity.’” (quoting *Capital One Fin. Corp.*, 850 F.3d at 1341)).

## IV. Conclusion

For the foregoing reasons, IT IS HEREBY ORDERED that defendant Affinity Network, Inc.'s motion to dismiss (ECF No. 29) is GRANTED.

IT IS FURTHER ORDERED that defendant's motion to stay the case (ECF No. 30) is DENIED as moot.

The Clerk of Court is instructed to CLOSE THIS CASE.

DATED: October 19, 2022

Cristina D. Silva  
United States District Judge